

THIRD DISTRICT COURT OF APPEALS LOCAL RULES

The procedures prescribed by this local rule apply in addition to those prescribed by the Texas Rules of Appellate Procedure. The Rules of Appellate Procedure continue to apply with full force and effect.

Local Rule 1. Frivolous Appeals in Criminal Cases

- (a) **Pre-withdrawal Compliance.** An appointed attorney who believes that an appeal in a criminal case is frivolous must comply with all legal requirements before filing an *Anders* brief. The Third Court requires counsel to demonstrate compliance with these pre-withdrawal requirements by filing, contemporaneously with counsel's motion to withdraw and *Anders* brief, a completed *Certificate of Counsel*. The form for this certificate is attached hereto and is available on the Court's website. It provides written verification to the Court that counsel has provided copies of the motion and brief to appellant, advised appellant of his rights, explained to appellant the procedures to be followed in a frivolous appeal, and informed appellant of the applicable deadlines.
- (b) **Notice to Appellant.** A sample cover letter for appointed counsel to send to appellant in a frivolous criminal appeal is attached hereto and is available on the Court's website. Though not required to be used by counsel, the Court strongly encourages counsel to use this letter to assist in fulfilling counsel's obligations pursuant to *Anders*.
- (c) **Content of *Anders* Brief.** The Third Court does not require counsel to expressly address any particular area in the *Anders* brief. However, counsel must demonstrate a diligent review of the record and the applicable law. Accordingly, the Court recommends examining the following areas of the record and the law to ensure compliance with *Anders*:
 - (1) the charging instrument;
 - (2) jurisdiction;
 - (3) pre-trial matters and motions;
 - (4) any required admonishments (for example, in before a guilty plea);
 - (5) jury selection;
 - (6) expert testimony;
 - (7) jury argument;
 - (8) the court's jury charge;
 - (9) sufficiency of the evidence;
 - (10) assistance of counsel;
 - (11) assessment of court costs or attorney's fees;
 - (12) the judgment

This list is not exhaustive and depends, of course, on the nature of the case being appealed. However, discussion of these areas is helpful to the Court in making its determination of whether the appeal is frivolous. Counsel is also encouraged to discuss in the brief any other potential errors present in the record considered by counsel.

[APPELLANT]	§	IN THE COURT OF APPEALS
	§	
v.	§	THIRD JUDICIAL DISTRICT
	§	
THE STATE OF TEXAS	§	SITTING AT AUSTIN, TEXAS

CERTIFICATE OF COUNSEL

In compliance with the requirements of *Anders v. California*, 386 U.S. 378 (1967), I, [Name of Attorney], court-appointed counsel for appellant, [Name of Appellant], in the above-referenced appeal, do hereby verify, in writing, to the Court that I have:

1. notified appellant that I filed a motion to withdraw as counsel with an accompanying *Anders* brief, and provided a copy of each to appellant;
2. informed appellant of his right to file a pro se response identifying what he believes to be meritorious grounds to be raised in his appeal, should he so desire;
3. advised appellant of his right to review the appellate record, should he wish to do so, preparatory to filing that response;
4. explained the process for obtaining the appellate record, provided a *Motion for Pro Se Access to the Appellate Record* lacking only appellant's signature and the date, and provided the mailing address for this Court; and
5. informed appellant of his right to seek discretionary review pro se should this Court declare his appeal frivolous.

Respectfully submitted,

Attorney for Appellant

Dear **[Appellant]**:

Enclosed please find a copy of the motion to withdraw as counsel and brief pursuant to *Anders v. California* that I have prepared and filed in your case. After a diligent search of both the clerk's record and reporter's record in your case and a review of the applicable law, it is my opinion that no reversible error occurred at your **[trial / plea proceeding / sentencing proceeding / revocation proceeding / adjudication proceeding]**.

Whenever appellate counsel files a motion such as this, the law provides the appellant the right to review the record and file a response identifying to the appellate court any grounds he thinks are non-frivolous issues to be raised on his behalf that the appellate court should consider in deciding whether the case presents any meritorious grounds for appeal. Because I have filed this motion and brief, you now have the right to review the record and file a response or brief if you so choose. To assist you in obtaining the record if you wish to review it, I have enclosed a *Motion for Pro Se Access to the Appellate Record* for you to file. In order to obtain the appellate record, you must sign and date the motion and mail it to the Third Court of Appeals within ten days of the date of this letter at the following address:

Jeffrey D. Kyle, Clerk
Third Court of Appeals
Post Office Box 12547
Austin, Texas 78711

The Court of Appeals will then direct the clerk of the trial court to provide you with a copy of the appellate record. Your response will be due to be filed in the Third Court of Appeals within 30 days of the date the clerk provides the record to you.

Whether or not you file a response, the law requires the Court of Appeals to review the record to determine if the Court agrees with my assessment that no meritorious grounds for appeal exist, i.e., that no reversible error exists. If the Court does not agree, but instead believes there are non-frivolous issues to be raised on your behalf, the Court must abate the appeal to have another attorney appointed to review the record on your behalf.

Should the Court of Appeals ultimately determine that there are no meritorious grounds to be raised and that your appeal is frivolous, the Court will affirm your **[conviction and sentence / revocation / adjudication]**. You may then file a pro se petition for discretionary review with the Texas Court of Criminal Appeals. Such petition must be filed within 30 days of the date the Court of Appeals renders its judgment.

Feel free to write me if you have any questions about the procedure utilized in your appeal. I will do my best to answer any questions you may have.

Sincerely,

[Appellant's Attorney]